

Dy. CIT & ANR. v. M/s PEPSI FOODS LTD. (NOW PEPSICO INDIA HOLDINGS PVT. LTD.), SLP NO. 30284 of 2015

FACTS/BACKGROUND IN BRIEF

The Delhi High Court had struck down a part of the third proviso to Section 254(2A) of the Income Tax Act which did not permit the extension of a stay order beyond 365 days even if the assessee was not responsible for delay in hearing the appeals before the ITAT. This judgment, reported as **M/s Pepsi Foods Ltd. v. ACIT (2015) 376 ITR 87**, along with several other similar judgments, were challenged by way of this Special Leave Petition (SLP).

ISSUES BEFORE THE COURT

The common issue dealt with by the Supreme Court of India was; whether the third proviso to section 254(2A) was arbitrary and violative of Article 14 of the Constitution of India, to the extent that it did not allow the extension of stay of the assessment order beyond 365 days, even if the assessee was not at fault for delays in the hearing.

FINDINGS OF THE COURT

First and foremost, the Supreme Court of India dealt with the fundamental question of whether a taxation statute can be challenged for violation of Article 14 of the Constitution of India. The Supreme Court held that; *“It is settled law that challenges to tax statutes made under Article 14 of the Constitution of India can be on grounds relatable to discrimination as well as grounds relatable to manifest arbitrariness. These grounds may be procedural or substantive in nature.”*

For this purpose, several decisions were relied on, such as that of **Suraj Mall Mohta and Co. v. A.V. Visvanatha Sastri (1955) 1 SCR 448** and **Kunnathat Thatehunni Moopil Nair v. State of Kerala (1961) 3 SCR 77**, where taxation provisions that were discriminatory, or treated un-equals as equals were struck down for violation of Article 14. The Court also relied on the case of **Union of India v. A. Sanyasi Rao (1996) 3 SCC 465**, where provisions of the Income Tax Act were struck down, as they discriminated against certain trades and were considered as manifestly arbitrary by the court.

The Supreme Court then went on to test whether the third proviso to section 254(2A) of the Act violated Article 14 of the Constitution of India, on the grounds that it was discriminatory and arbitrary, and it treated un-equals as equals.

The Supreme Court has approved the judgment of the Bombay High Court in **Narang Overseas Pvt. Ltd. v. ITAT (2007) 295 ITR 22**, where it was held that if the power to continue an interim relief was not read into the impugned provision, it would result in a denial of the right to appeal, especially if the delay was caused due to no fault of the appellant. Similarly, the apex Court has upheld the view of the Punjab & Haryana High Court in **PML Industries Ltd. v. CCE (2013) SCC OnLine P&H 4440** where it was held that like treatment of appellants who cause delay in proceedings and those who do not amounts to treatment of un-equals as equals and, therefore, violative of Article 14 of the Constitution of India.

On this basis, the Supreme Court held that the impugned provision was manifestly arbitrary and discriminatory, as an automatic vacation of stay upon the expiry of 365 days would result in denial of the statutory right to appeal, for no fault of the appellant. Further, it was also held that the impugned provision was arbitrary, as the vacation of stay would ensue even if the delay was caused by the Revenue. The Court that such an interpretation of the impugned provision was violative of Article 14 of the Constitution of India.

It was further observed that when such an interpretation results in manifest arbitrariness or discrimination against taxpayers, the Court must strive to form a more rational construction. The Supreme Court relied on the case of **CIT v. J.H. Gotla (1985) 4 SCC 343** for this purpose.

CONCLUSION

The Supreme Court upheld the impugned judgment of the Delhi High Court in *M/s Pepsi Foods Ltd. (Supra)*, along with all other similar judgments by the High Courts, thereby holding the third proviso to section 254(2A) as violative of Article 14 of the Constitution of India.

The Judgment has re-emphasised the salutary principle that even a taxing statute is subject to the test of reasonableness under Article 14 of the Constitution of India and can be struck down on grounds of manifest arbitrariness.

Case Highlight

The Judgment goes on to hold that taxation policy has to be within the permissible constitutional restraints, otherwise the policy itself may be struck down.

In the backdrop of the aforesaid Judgment, the amendment made to same provision vide Finance Act, 2020 requiring taxpayers to deposit at least 20% of the disputed demand for obtaining stay from the Tax Tribunal appears to be ex-facie arbitrary and discriminatory and is, therefore, susceptible to challenge.

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